

**WASHINGTON STATEWIDE**

**CONTRACT**

For

Security Custody Services

**2006**

**WASHINGTON STATEWIDE CONTRACT  
FOR SECURITY CUSTODY SERVICES**

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**WASHINGTON STATEWIDE AGREEMENT  
FOR CUSTODY SERVICES**

**GENERAL PROVISIONS**

1. **CONTRACTING PARTIES**

THIS AGREEMENT is entered into by and between \_\_\_\_\_, STATE OF WASHINGTON, hereinafter referred to as the "Agency" and Union Bank of California, hereinafter referred to as the "Custodian" or the "Bank."

2. **HEREBY WITNESSETH:**

The State Of Washington, acting by and through the OFFICE OF THE TREASURER of the STATE OF WASHINGTON, issued a Request for Proposal (RFP), dated November 17, 2005 for the purpose of obtaining proposals for providing statewide custody services.

As a result of that process, the State Treasurer has designated the Bank as the Statewide Custodian, and the Bank has agreed to provide Statewide Custody Services, hereinafter referred to as the "Services," as described in Bank's proposal, attached hereto at the prices stated therein, in accordance with the terms of this Agreement.

3. **ADDITIONAL SERVICES**

The Parties agree that additional services, appropriate to the scope of this Agreement, may be added to this Agreement by an instrument in writing and only with the written consent of both parties. Such writing shall include a specific description of the additional Services, pricing and additional terms and conditions as relevant. The additional Services shall be available under the same terms and conditions established herein except as specifically amended between the parties.

4. **CONSIDERATION**

In consideration whereof, the mutual promises made to each other, as hereinafter set forth, the parties further agree as follows:

The Agency and the Bank agree that this Agreement together with any amendments or addenda attached thereto is the complete and exclusive statement between the parties which supersedes all proposals or prior agreements, oral or written, and all other communications between the parties relating to the subject matter of this Agreement.

To the extent that any term or condition is in conflict with any other term or condition of this Agreement, the order of authority is as follows: (1) these General Provisions are controlling, followed by; (2) the Office of the State Treasurer RFP for Statewide

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Securities Custody Services; and (3) the Bank's Proposal, inclusive of related Exhibits and Schedules.

Unless otherwise agreed in writing, all amendments, addenda, and orders signed during the life of this Agreement shall be governed by these General Provisions.

Any notice or demand which under this Agreement or applicable law must or may be given by the Bank, or Agency shall be in writing, properly addressed and, as an alternative to personal delivery, made by the most expeditious means available, with due regard given to the time sensitivity of the notice or demand being made.

if to the Bank, at:

if to the Agency, at:

Union Bank of California  
350 California Street, 6<sup>th</sup> Floor  
San Francisco, CA 94104  
Attention: Moon Lee  
Institutional Custody Services

### 5. APPOINTMENT OF CUSTODIAN

The Agency hereby appoints the Bank as Custodian for certain assets of the Agency and authorizes Custodian to hold such assets in registered form in its name or the name of its nominees. All property delivered to the Bank, its agents or subcustodians, shall be held and dealt with as herein provided. The Bank shall have no responsibility or liability for the acts or omissions of prior Custodians, and shall not be responsible for any property of the Agency not delivered to the Bank, its agents or subcustodians, and shall only be obligated to accept such property that is in street name or other good delivery form. The Bank hereby accepts this appointment.

### 6. AGREEMENT

NOW THEREFORE the Agency hereby awards to the Bank this Agreement for Custody Services, hereinafter referred to as "Services," as listed and described in the RFP for Statewide Custody Services as Exhibit A and acknowledged in the Bank's proposal as Exhibit B both of which are on file at the Office of the State Treasurer, and by this reference made a part hereof, as though completely set forth herein, subject to and in accordance with the terms of this Agreement.

### 7. PERSONAL LIABILITY

It is agreed by and between the parties hereto that in no event shall any official, officer, employee or agent of the Agency be in any way personally liable or responsible for any covenant or agreement herein contained whether expressed or implied, nor for any statement or representation made herein or in any connection with this agreement.

8. HOLD HARMLESS AND INDEMNIFICATION

- 8.1 The Bank shall be financially responsible (liable) for any direct money damages suffered by the Agency which are caused by the Bank's own negligence, fraud, or failure to exercise Due Care, as defined in Section 41.9.1, in the Bank's performance of its duties under this Agreement. For the purposes of this Agreement, direct money damages shall include those situations where interest charges are incurred by the Agency or any loss of earnings occurs that would otherwise have been realized by the Agency through an overnight investment of funds, and where such interest charges or loss of earnings are caused by the Bank's own negligence, fraud, or failure to exercise Due Care, as defined in Section 41.9.1.
- 8.2 The Bank shall not be financially responsible (liable) for any damages or for any losses to the Agency, unless such losses constitute direct money damages caused by the Bank's own negligence, fraud, or failure to exercise Due Care, as defined in Section 41.9.1, in the Bank's performance of its duties under this Agreement. Notwithstanding any other document or provision in this Agreement to the contrary, but subject to Section 8.1 hereof, in no event shall the Bank be liable for indirect, incidental, consequential or special damages regardless of the form of action and even if the same are foreseeable, except that the foregoing provisions of this sentence shall not limit the Bank's liability for any punitive damages.
- 8.3 Each party to this Agreement agrees to indemnify and hold harmless the other party, to the extent authorized by law, from all losses (excluding attorney's fees and expenses) which relate to or result from lawsuits brought by non-parties to this Agreement from activities covered by this Agreement from:
- 8.3.1 A failure by the indemnifying party or its subsidiaries, affiliates, agents, subcontractors, representatives or employees to comply with any applicable federal, state or local law, rule or regulation;
- 8.3.2 A negligent act or omission or the breach of this Agreement (as defined in Section 19.3) by the indemnifying party, its subsidiaries, affiliates, agents, subcontractors, representatives or employees; or a failure to exercise due care as defined in Section 41.9.1 herein.
- 8.3.3 Fraudulent or intentional misconduct by the indemnifying party or its agents, subcontractors, representatives or employees.
- 8.3.4 Nothing in this section shall be construed to mean either party is prevented from commencing a legal action against the other.

- 8.4 Notwithstanding any other document or provision in this Agreement to the contrary, the above indemnity by the Bank to the Agency shall be limited to direct money damages and shall relate only to the Bank's own actions or omissions which constitute negligence, fraud, or failure to exercise Due Care.

9. CONFLICT AND SEVERABILITY

- 9.1 CONFLICT In the event of conflict between contract documents and applicable laws, codes, ordinances or regulations, the most stringent or legally binding requirement shall govern and be considered a part of this contract to afford the Agency maximum benefits.
- 9.2 SEVERABILITY Any provision of this document found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of the document.

10. NONDISCRIMINATION AND AFFIRMATIVE ACTION

During the performance of this Agreement, the Bank shall comply with all federal and state nondiscrimination statutes and regulations. These requirements include, but are not limited to:

- 10.1 Nondiscrimination in Employment: The Bank shall not discriminate against any employee or applicant for employment because of race, color, sex, religion, national origin, creed, marital status, age, or the presence of any sensory, mental or physical disability.
- 10.2 Nondiscrimination in Client Services: The Bank shall not, on the basis of race, color, sex, religion, national origin, creed, marital status, age or the presence of any sensory, mental or physical disability:
- 10.2.1 Deny an individual any services or other benefits provided under this contract;
- 10.2.2 Provide any service(s) or other benefits to an individual which are different, or are provided in a different manner, from those provided to others under this contract;
- 10.2.3 Subject an individual to segregation or separate treatment in any manner related to the receipt of any service(s) or other benefits provided under this contract; or,
- 10.2.4 Deny any individual an opportunity to participate in any program provided by this contract through the provision of services or otherwise, or afford any opportunity which is different from that afforded others under this contract.

- 10.3 The Bank, in determining (1) the types of services or other benefits to be provided or (2) the class of individuals to whom, or the situation in which, such services or other benefits will be provided or (3) the class of individuals to be afforded an opportunity to participate in any services or other benefits, will not utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, sex, religion, national origin, creed, marital status, age or the presence of any sensory, mental or physical disability.
- 10.4 Noncompliance With Nondiscrimination Requirements: In the event of the Bank's noncompliance or refusal to comply with these nondiscrimination requirements, this contract may be rescinded, canceled or terminated in whole or in part, and the Bank may be declared ineligible for further contracts with the Agency. The Bank shall, however, be given a reasonable time in which to cure the noncompliance. Any dispute may be resolved in accordance with the Disputes section set forth in this Agreement.

11. GIFTS AND GRATUITIES

In accordance with RCW 42.23 Code of Ethics for Municipal Officers-Contract Interests, it is unlawful for any person to accept, directly or indirectly, any compensation, gratuity, or reward in connection with this contract from any person beneficially interested therein.

12. RIGHTS AND REMEDIES

In the event of any claim for default or breach of contract, no provision in this document nor in the Bank's proposal for services shall be construed, expressly or by implication, as a waiver by the Agency of any right to insist upon the strict performance of any term or condition of the contract or to exercise or delay the exercise of any right or remedy provided in the contract or by law, or as the acceptance of (or payment for) materials, equipment or services, or to release the Bank from any responsibilities or obligations imposed by this contract or by law.

13. PERFORMANCE

Acceptance by the Agency of unsatisfactory performance with or without objection or reservation shall neither waive the right to claim damage for breach nor constitute a waiver of requirements for satisfactory performance of any obligation remaining to be performed by Bank.

14. GOVERNING LAW

This Agreement shall be governed in all respects by, and construed in accordance with, the law and statutes of the State of Washington. The venue of any action hereunder shall be exclusively in the Superior Court for \_\_\_\_\_ County, Washington.



The Bank, by execution of this contract, acknowledges the jurisdiction of the courts of the state of Washington in this matter.

15. SUBCONTRACT/ASSIGNMENT

The Bank shall not subcontract or assign its obligations under this contract without the prior written consent of the Contract Administrator. The Bank shall be responsible to ensure that all requirements of the contract shall be communicated to any and all subcontractors.

Substitution of another financial institution to act as the Bank under this Agreement may occur in the event of a takeover, merger, or acquisition. In this event, the Successor Bank shall provide an automatic continuation of all terms of this Agreement, provided the Successor Bank can meet all required terms of the Agreement. However, the Agency reserves the right to terminate the contract in the event a Successor Bank is substituted, after providing 60 calendar days written termination notice.

**DEFINITIONS**

16. DEFINITIONS

Definitions as used throughout this Agreement shall have the meanings set forth below:

"Exhibit A" shall mean the Request For Proposal (RFP) for Statewide Custody Services issued by the Office of the State Treasurer, dated November 17, 2005.

"Exhibit B" shall mean the Bank's proposal in response to the State RFP for Statewide Custody Services.

"Exhibit C" shall mean the Bank's schedule of fees for all Services provided under this Agreement.

"Exhibit D" shall mean the Funds Transfer Authorization Agreement which shall run concurrently with this Agreement.

"Agency Contract Administrator" shall mean the staff person appointed by the Agency to administer this Agreement on behalf of the Agency.

"Bank" shall mean Union Bank of California. It shall also include any subcontractor retained by the Bank as permitted under the terms of this Agreement.

"Bank's Account Manager" shall mean an employee of the Bank who is permanently assigned as the primary contact person whom the Agency Contract Administrator shall work with for the duration of this Agreement.

"Custody Services" may also be referred to as "Services," and shall be inclusive of all services, including associated support services and maintenance provided pursuant to this Agreement.

"Depository" shall include the Federal Reserve/Treasury book-entry system for receiving and delivering securities, the Depository Trust Company, and any other securities depository, book-entry system or clearing agency (and their respective successors and nominees) authorized to act as a securities depository, book-entry system or clearing agency pursuant to applicable law.

"Subcontractor" shall mean one not in the employment of the Bank, who is performing all or part of those Services under this Agreement under a separate contract with the Bank. The term "subcontractor" means subcontractor(s) of any tier.

"RCW" shall mean the Revised Code of Washington (Washington State Law).

### **SCOPE OF SERVICES**

#### **17. SCOPE OF SERVICES**

The Bank agrees to provide custody services, record keeping and cash management, as further described in the Office of the State Treasurer RFP (Exhibit A) and the Bank's Proposal (Exhibit B), under the terms of this Agreement, serving as the Statewide Custodian of Washington State.

### **AGREEMENT TERM AND TERMINATION**

#### **18. TERM OF AGREEMENT AND SURVIVORSHIP OF TERMS**

This Agreement shall commence on \_\_\_\_\_, and continue until \_\_\_\_\_.

The Bank is not obliged to offer this contract for a time period of less than one year, nor is the Bank obliged to offer the contract with a termination date exceeding the termination date of its appointment as the Statewide Custodian.

The term of this Agreement may be extended for additional contract periods or portions thereof, whereby the total contract period with extensions shall not exceed six (6) years, PROVIDED: the extension shall be by mutual agreement between the Agency and the Bank, and by the Agency giving written notice of the extension to the Bank not less than 180 days prior to the termination date of this Agreement.

19. TERMINATION AND REMEDIES

19.1 TERMINATION FOR CONVENIENCE The Agency may terminate this contract, in whole or in part, at any time and for any reason by giving 60 calendar days written termination notice to the Bank and the State Treasurer. The Bank may terminate this contract, by giving 180 days written termination notice to the Agency and the State Treasurer.

19.2 TERMINATION FOR REDUCTION OF FUNDING OR WITHDRAWAL OF AUTHORITY In the event that either funding from the Agency or other sources is withdrawn, reduced, or limited, or the authority of the Agency to perform any of its duties is withdrawn, reduced or limited in any way after the effective date of this Agreement and prior to its normal completion, the Agency may terminate this Agreement, in whole or in part, at any time by giving 60 calendar days written termination notice to the Bank.

19.3 TERMINATION FOR BREACH Except in the case of delay or failure resulting from circumstances beyond the control of and without the fault or negligence of the Bank or of the Bank's suppliers or subcontractors, the Agency shall be entitled, by written or verbal notice, to cancel this contract in its entirety or in part, for breach of any of the terms herein, and to retain all other rights against the Bank by reason of the Bank's breach as provided by law.

A breach shall mean one or more of the following events: (1) the Bank fails to perform the services by the time and date required and such failure is not caused by a force majeure event; (2) the Bank breaches any warranty, or fails to perform or comply with any term or agreement in the contract; (3) the Bank fails to exercise Due Care as to any aspect of this Agreement, with Due Care being defined in Section 42.9.1; (4) the Bank makes any general assignment for the benefit of creditors; (5) the Bank becomes insolvent or in an unsound financial condition so as to endanger performance hereunder; (6) the Bank becomes the subject of any proceeding under any law relating to bankruptcy, insolvency or reorganization or relief from debtors; or (7) any receiver, trustee or similar official is appointed for the Bank or any of the Bank's property. If it is subsequently found that the Bank was not in breach, the rights and obligations of the parties shall be the same as if a Notice of Termination had been issued pursuant to subparagraph 19.1.

The Agency Contracting Officer shall issue a written notice of breach providing a period not to exceed 30 days in which the Bank shall have an opportunity to cure. Time allowed for cure shall not diminish or eliminate the Bank's liability for damages.

If the breach remains, after the Bank has been provided the opportunity to cure, the Agency may do one or more of the following:

19.3.1 Exercise any remedy provided by law;

19.3.2 Terminate this contract and any related contracts or portions thereof, by written or verbal notice;

19.3.3 Seek damages.

19.4 TERMINATION BY MUTUAL AGREEMENT The Agency and the Bank may terminate this contract in whole or in part, at any time, by mutual agreement.

19.5 TERMINATION PROCEDURE Upon termination of this contract the Agency, in addition to any other rights provided in this contract, may require the Bank to deliver to the Agency any property specifically produced or acquired for the performance of such part of this contract as has been terminated.

The Agency shall pay to the Bank the agreed upon price, if separately stated, for completed work and services accepted by the Agency, and the amount agreed upon by the Bank for (a) completed work and services for which no separate price is stated, (b) partially complete work and services, (c) other property or services which are accepted by the Agency, and (d) the protection and preservation of property, unless the termination is for default, in which case the Agency shall determine the extent of the liability of the Agency. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" section of this contract. The Agency may withhold from any amounts due to the Bank such sum as the Agency determines to be necessary to protect the Agency against potential loss or liability.

The rights and remedies of the Agency provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

19.6 TERMINATION-RELATED OBLIGATIONS ANTECEDENT TO DATE OF TERMINATION Upon nearing the end of the final term of this agreement, and without respect to either the cause or time of such termination, the Bank shall take all reasonable and prudent measures to facilitate the transition to a successor provider's system.

The Bank shall provide, at any time during the nine (9) months preceding termination, such information about the Bank's systems as will be reasonably required by the Agency and/or the successor for purposes of planning the transition and conversion to the successor's system.

19.7 OBLIGATIONS UPON TERMINATION After receipt of a notice of termination, and except as otherwise directed by the Agency Contract Administrator, the Bank shall:

- 19.7.1 Stop work under the contract on the date, and to the extent, specified in the notice;
- 19.7.2 Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the contract as is not terminated;
- 19.7.3 Assign to the Agency, in the manner, at the times, and to the extent directed by the Agency Contract Administrator all of the rights, titles, and interest of the Bank under the orders and subcontracts so terminated, in which case the Agency has the right, at its discretion, to settle or pay any and all claims arising out of the termination of such orders and subcontracts;
- 19.7.4 Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Agency Contract Administrator to the extent they may require, which approval or ratification shall be final for all the purposes of this clause;
- 19.7.5 Transfer title to the Agency and deliver in the manner, at the times, and to the extent, if any, as directed by the Agency Contract Administrator, any property which, if the contract had been completed, would have been required to be furnished to the Agency;
- 19.7.6 Complete performance of such part of the work as shall not have been terminated; and
- 19.7.7 Take such action as may be necessary, or as the Agency Contract Administrator may direct, for the protection and preservation of the property related to this contract which is in the possession of the Bank and in which the Agency has or may acquire an interest and to transfer that property to the successor Bank.

By such termination, neither the Agency nor the Bank may nullify obligations already incurred for performance or failure to perform prior to the date of termination.

20. FORCE MAJEURE

- 20.1 DEFINITION Neither party shall be liable to the other or deemed in default under this contract if and to the extent that such party's performance of this contract is prevented by reason of force majeure. The

term "force majeure" means an occurrence that is beyond the control of the party affected and could not have been avoided by exercising reasonable diligence. Force majeure shall include acts of God, war, riots, strikes, fire, floods, earthquakes, epidemics, or other similar occurrences.

20.2 ALLOCATION OF SERVICE When force majeure affects only part of the Bank's capacity to perform, the Bank may allocate services among its customers, including regular customers not included in this Agreement, in any manner which is fair and reasonable.

20.3 NOTIFICATION If either party is delayed by force majeure, said party shall provide reasonable notice that there will be delay or non-delivery of reports or services. The notification shall provide evidence of the force majeure to the reasonable satisfaction of the other party. Such delay shall cease as soon as practicable and written notification of same shall be provided. The time of completion shall be extended by contract modification for a period of time equal to the time that the results or effects of such delay prevented the delayed party from performing in accordance with this contract.

20.4 RIGHTS RESERVED The Agency reserves the right to cancel the contract and/or purchase services from the best available source during the time of force majeure, and Bank shall have no recourse against the Agency.

21. CONFLICT OF INTEREST

21.1 The Bank warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this contract.

21.2 The Agency may terminate this Agreement, by written notice to the Bank, if it is found after due notice and examination that there is a violation by Bank of:

21.2.1 RCW 42.23 Code of Ethics for Municipal Officers-Contract Interests or any other similar statute involving the Bank in its performance under this Agreement.

21.3 In the event this Agreement is terminated as provided above, the Agency shall be entitled to pursue the same remedies against the Bank as it could pursue in the event of a breach of this Agreement by the Bank. The rights and remedies of the Agency provided by this clause shall not be exclusive and are in addition to any other rights and remedies provided by law.

## **CONTRACT ADMINISTRATION**

### **22. INCORPORATED DOCUMENTS**

This Agreement shall consist of the terms and conditions as set forth herein and the following documents which are incorporated herein by reference:

- 22.1 "Exhibit A" - The Request For Proposal (RFP) for Statewide Custody Services, issued by and on file at the Office of the State Treasurer, dated November 17, 2005.
- 22.2 "Exhibit B" - The Bank's proposal in response to the State RFP for Statewide Custody Services, also on file at the Office of the State Treasurer.
- 22.3 "Exhibit C" - The Bank's schedule of fees for all Services provided under this Agreement.
- 22.4 "Exhibit D" - The Funds Transfer Authorization Agreement which shall run concurrently with this Agreement.

### **23. ORDER OF PRECEDENCE**

- 23.1 The headings used herein are inserted for convenience only and shall not control nor affect the meaning or construction of any of the provisions.
- 23.2 If any provision of this Agreement shall be deemed to be in conflict with any statute or rule of law, such provisions shall be deemed modified to conform to said statute or rule of law. In the event of any inconsistency in this Agreement, the inconsistency shall be resolved in the order of precedence stated below:
  - 23.2.1 Applicable Federal and State Statutes and Regulations.
  - 23.2.2 The Terms and Conditions of this Agreement.
  - 23.2.3 Exhibit A - The Request For Proposal (RFP) for Statewide Custody Services issued by the Office of the State Treasurer, dated November 17, 2005, and Exhibit B - The Bank's proposal in response to the State RFP for Statewide Custody Services.

### **24. ENTIRE AGREEMENT**

This document, including all addenda and subsequently issued change notices, comprises the entire agreement between the Agency and the Bank and shall be governed by the laws of the State of Washington incorporated herein by reference.

25. LIMITATION OF AGENCY'S AUTHORITY

Only the Agency Contracting Officer, or delegate by writing, shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Agreement. Furthermore, any alteration, amendment, modification, or waiver of any clause or condition of this Agreement is not effective or binding until made in writing and signed by the Agency and the Bank unless otherwise provided herein.

26. AGENCY CONTRACT ADMINISTRATOR

The Agency shall appoint an individual who will be the Contract Administrator for this Agreement and will provide oversight of the activities conducted hereunder. The Agency Contract Administrator will manage this Agreement on behalf of the Agency, and will be the principal point of contact for the Bank concerning Bank's performance hereunder. The Agency shall notify Bank, in writing, when there is a change in staffing and a new Contract Administrator is assigned to this Agreement.

27. BANK'S ACCOUNT MANAGER

The Bank shall appoint an individual who will be the Account Manager for the Agency account. The Bank's Account Manager will be the principal point of contact for the Agency concerning the Bank's performance hereunder. The Bank's Account Manager will also serve as the focal point for business matters, support coordination, and administrative activities. The Bank shall notify the Agency in writing if a new Account Manager is assigned.

28. CHANGES

No modifications or amendments to this Agreement shall be effective unless it is in a written amendment signed by an authorized officer of the Bank and the Agency Contract Administrator.

29. DISPUTES

29.1 Except as otherwise provided in this Agreement, when a bona fide dispute concerning a question of fact arises between the Agency and the Bank, and it cannot be resolved, either party may initiate the dispute resolution procedure provided herein.

29.2 Time is of the essence in resolving disputes. The initiating party shall reduce its description of the dispute to writing and deliver it to the responding party. The responding party must respond in writing within two (2) Agency working days.

29.2.1 Then, both parties shall have three (3) Agency working days to negotiate in good faith to resolve the dispute.



29.3 Both parties agree to exercise good faith in dispute resolution and to avoid litigation whenever reasonably possible. Nothing in this Agreement shall prevent either party, after the expiration of the three (3) day period in Section 29.2.1, from pursuing other methods of dispute resolution.

29.4 The Agency and the Bank agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this Agreement which are not affected by the dispute.

30. ADVERTISING

The Bank shall not advertise or publish information concerning this contract in any form or media without prior written consent from the Agency.

31. CONSENT

Both parties agree that whenever a party's consent is required under the terms of this Agreement, that consent shall not be unreasonably delayed or withheld.

**AGENCY RESPONSIBILITIES**

32. PROTECTION OF PROPRIETARY AND CONFIDENTIAL INFORMATION

Any specific information that is contained in the Bank's Proposal (Exhibit B) that is confidential or proprietary, must be clearly identified by the Bank by stamping "CONFIDENTIAL" on the lower right hand corner of the corresponding page(s). A blanket designation of the entire proposal as being confidential will be disregarded. If a request is made to view Bank's proprietary information, the State Treasurer and the Agency will comply with the Public Records Act, chapter 42.17 RCW.

33. FUNDS TRANSFER AUTHORIZATION AGREEMENT

The Agency shall execute a Funds Transfer Authorization Agreement with the Bank. This agreement shall remain in effect for the duration of this Agreement. The Transfer Agreement is attached hereto as Exhibit D. In the case of any conflict between the Funds Transfer Authorization Agreement and this Agreement, this Agreement shall take precedence.

## **BANK RESPONSIBILITIES**

### **34. REGISTRATION WITH THE DEPARTMENT OF REVENUE**

The Bank shall complete registration with the Department of Revenue, General Administration Building, Olympia, Washington 98504, and be responsible for payment of all taxes due on payments made under this contract.

### **35. LICENSING AND ACCREDITATION STANDARDS**

The Bank shall comply with all applicable local, state, and federal licensing requirements and standards necessary in the performance of this Agreement.

### **36. WORKERS' COMPENSATION INSURANCE COVERAGE**

The Bank shall provide or purchase applicable workers' compensation insurance coverage prior to performing work under this contract. The Agency will not be responsible for payment of industrial insurance premiums for the Bank, or any subcontractor or employee of the Bank, which might arise under the workers' compensation insurance laws during performance of duties and services under this contract. Should the Bank fail to secure workers' compensation insurance coverage or fail to pay premiums on behalf of its employees, the Agency may deduct the amount of premiums owing from the amounts payable to the Bank under this contract and transmit the same to the appropriate workers' compensation insurance fund.

### **37. CONFIDENTIALITY OF AGENCY RECORDS**

- 37.1 The Bank acknowledges that material and information which has or will come into its possession or knowledge in connection with this Agreement, or its performance, may consist of confidential and proprietary data, the disclosure of which to, or use by, third parties could be damaging.
- 37.2 Access to information concerning the Agency or individual recipients of the Agency's services shall not be granted except as authorized by law or in writing by the Agency.
- 37.3 The Bank, therefore, agrees to hold all such material and information in strictest confidence, not to make use thereof other than for the performance of this Agreement, to release it only to authorized employees requiring such information, and not to release or disclose it to any other party.
- 37.4 Notwithstanding anything apparently to the contrary in the preceding provisions of this Section 37, the Bank may release the material and information described in this Section 37 to authorized bank examiners and to its internal and external auditors for official use and may also release it pursuant to a subpoena or other order issued by a court of competent

jurisdiction. The Bank shall promptly notify the Agency of any such subpoena or order upon its receipt.

38. AUDITING

The Bank shall permit representatives of the Agency, the Agency Auditor, an auditor selected by the Agency, and/or the Auditor of the State of Washington or their authorized assistant to examine the records of the Bank relating to the services rendered under this Agreement, including securities transactions. Such audits may include, but are not limited to, examination of the securities themselves. If the Bank has contracted for deposit of the securities with another Bank, the Bank shall require its subcontractor to provide similar access to the designated Agency and State officials or their representatives. Any audits required by this Section which do not necessitate the compilation of records in addition to those which are otherwise required by other Sections of this Agreement may be conducted without notice. Any audits required by this Section which require the compilation of records in addition to those which are otherwise required by this Agreement may be conducted upon ten (10) days written notice from the Agency to the Bank. The provisions of this Section shall remain in effect for eighteen (18) months after the expiration, or sooner termination, of this Agreement. Records of Agency transactions must be kept and maintained by the Bank for a period of no less than seven (7) years from the date of the transaction.

39. BANK COMMITMENTS, WARRANTIES, AND REPRESENTATIONS

- 39.1 Any written commitment by the Bank within the scope of this Agreement shall be binding upon the Bank. Failure of the Bank to fulfill such a commitment may constitute breach and shall render the Bank liable for damages due the Agency under the terms of this Agreement.
- 39.2 For purposes of this Agreement, a commitment by the Bank, which must be in writing, includes: (1) prices and options committed to remain in force over a specified period(s) of time; (2) any warranty or representation made by the Bank in a proposal as to Service performance; (3) any warranty or representation made by the Bank concerning the characteristics of items in (2) above, contained in any literature, descriptions, or specifications accompanying or referred to in a proposal; (4) any modification of or affirmation or representation as to the above which is made by Bank in writing whether or not incorporated into a formal amendment to the proposal in question; and (5) any representation by the Bank in a proposal, supporting documents or amendments thereto as to, services to be performed, prices and options committed to remain in force over a fixed period of time, or any other similar matter regardless of the fact that the duration of such commitment may exceed the duration of this Agreement.

40. PRICE INCREASES

- 40.1 The Bank agrees to provide the Services at the costs, rates and fees set forth in Exhibit C, Custody Fee Schedule. No other costs, rates, or fees shall be payable to the Bank for implementation of Bank's proposal.
- 40.2 The fee schedule applies for two years from the date the Letter of Agreement is signed. Annual adjustments may be made by the Bank after the first two years to any or all items no greater than the national Consumer Price Index (CPI) as published by DRI/McGraw Hill for the preceding calendar year. The limitation would continue if the term of the Letter of Agreement is extended.

**CUSTODY PROVISIONS**

41. CUSTODY OF SECURITIES

- 41.1 CUSTODIAL SERVICES The Custodian shall take custody of the securities owned by the Agency, and tendered for transfer to its custody; provide safekeeping services for them and accept complete responsibility as a fiduciary for their safekeeping from the moment of delivery to it and/or its transfer agent until their safe return and delivery to the Agency or its designated agent upon expiration or sooner termination of this Agreement.

When ownership of a security is manifested by a certificate, bond, note or other physical document, the Custodian will verify proper registration of the security in the name of the Agency; keep the physical specimen in a secure vault, safe from destruction, damage, embezzlement and/or other loss; readily available to the Agency; and in a condition suitable for sale or transfer. When ownership is reflected in a book entry on official records only, the Custodian shall be shown on the books of the Federal Reserve System, the Depository Trust Corporation, or other depository agencies, as Custodian of the Agency's book-entry security; the Custodian shall verify the proper registration, evidenced by an entry in the Custodian's books reflecting that the Custodian holds those particular securities (or a quantity of securities that are part of a fungible bulk of government book-entry securities) as Custodian for the Agency; and the Custodian shall obtain and maintain the confirmatory documents in a secure area and unless expressly authorized by the Agency, keep the securities ready for immediate sale or transfer free and clear of all encumbrances.

- 41.2 INVENTORY; DELIVERY AND REDELIVERY the Custodian shall keep an accurate, current inventory of all securities held within its custody for the Agency. The inventory will contain precise identification of each

security including, when applicable, the date of purchase and maturity date; CUSIP numbers; and other sources of identification.

- 41.3 DEPOSIT OF SECURITIES the Custodian shall keep tangible securities in the facilities of the Custodian located in New York City, unless the Custodian and the Agency agree in writing to another location. Where securities are eligible for deposit in a book-entry system or a Depository, the Custodian may use that depository.

Security arrangements shall restrict access to the Agency securities, record all entries and withdrawals, and provide physical safety for records at least equal to customs and standards of banks in large metropolitan financial centers for maintenance of valuable commercial securities.

In addition, the Custodian shall maintain a “back-up” system of confirmatory records at another location so that if the vault at the Custodian’s approved facility is inaccessible or its material damaged, destroyed, or stolen, the Custodian can establish to a reasonable degree of certainty, the securities belonging to the Agency.

- 41.4 AGENCY CLEARING ACCOUNT the Custodian shall establish a clearing account for the Agency as directed by the Agency. This account shall accurately reflect transactions of all kinds, with respect to securities of the Agency. This account is not to be construed as a Depository Account.

The Custodian shall credit the following to the accounts immediately upon the earlier of the settlement date or the payment date:

- 41.4.1 All interest and other distributions received on account of the securities (including mortgages) held for the Agency;
- 41.4.2 All payments of principal or other return of capital, including, securities backed by mortgages and financing contracts;
- 41.4.3 All proceeds from the sale or transfer of securities, or rights appurtenant to the securities;
- 41.4.4 All payments made by the Agency to the Custodian and by the Custodian to the Agency;
- 41.4.5 The Custodian may debit the account with disbursements authorized by the Agency.

At the close of business, there shall be no cash in the clearing account. At the option of the Agency, all funds in the account at the close of business shall either be remitted by wire to the Agency in care of its primary bank

or invested in an investment authorized by state statutes and approved by the Agency.

- 41.5 TRANSACTIONS the Custodian shall assist the purchase of securities and the sale of securities within its possession owned by the Agency. When so instructed, the Custodian will:

41.5.1 Take possession of securities purchased by the Agency, and when authorized, make payment from the clearing accounts as established under this Agreement therefore;

41.5.2 Deliver securities sold or transferred by the Agency to the appropriate entity or person versus payment;

41.5.3 Register in its name or in its name as Custodian, securities owned by the Agency and held in its physical custody or those securities indicated on the records of the Federal Reserve System, the depository trust company of New York Agency, or another depository, provided that adequate records are maintained to identify the actual ownership of the securities by the Agency and all rights to interest, and sale proceeds are vested in the Agency;

41.5.4 At the option of the Agency, the Custodian shall:

41.5.4.1 credit or debit the appropriate money account of the Agency in connection with the purchase, sale, maturity, redemption, income, dividends or other disposition of securities and other assets held for the time being on behalf of the Agency in said accounts on an actual settlement basis; or

41.5.4.2 make available provisional credit of settlement, maturity redemption proceeds, income and dividends on a contractual settlement basis. The Custodian reserves the right to reverse any such crediting at any time before actual receipt of the item associated with the credit when the Custodian determines that actual receipt will not be received in due course for such an item. In such instances, the Custodian may charge the appropriate money account of the Agency for the expense of providing funds associated with such advance in an amount not to exceed the actual short-term earnings of the Agency during the time the funds were credited to the Agency.

41.5.4.3 In order to secure repayment of an advance of funds made in connection with a purchase of securities the Custodian shall have a purchase money security interest in, and a security entitlement with respect to, all of the Agency's right, title and interest in and to the securities acquired with such advance (including proceeds thereof). The Custodian shall with respect to such purchase money security interest be entitled to all the rights and remedies of a pledgee and secured creditor under applicable laws, rules or regulations as then in effect. If the Custodian, in its sole discretion, advances funds to the Agency or there shall arise for whatever reason an overdraft in the Agency's account the Custodian may at any time charge any such overdraft or indebtedness together with interest due thereon against any balance of account standing to such Agency's credit on the Custodian's books.

41.5.5 Disburse funds as requested and remit funds to the Agency before the close of each business day.

The Agency retains the exclusive authority to manage the assets of the Agency within the Custodian's custody. This includes the determination of which investments shall be made; what and when securities shall be sold or encumbered; the terms or conditions of any transaction; and the disposition of cash on hand. The Custodian shall make no transaction without instructions from the Agency, except the advance crediting of principal, interest and other proceeds to the Agency's clearing account.

41.6 INCOME ON DEFECTIVE TRANSACTIONS The Custodian shall pay the Agency the following sums when a transaction is defective without fault of the Agency:

41.6.1 If a seller fails to deliver the securities in proper form on the settlement date, and the Custodian is not providing contractual settlement, the Custodian shall return to the Agency all those funds designated for purchase before the close of each business day, or invest those funds in an investment authorized by state statutes and approved by the Agency.

41.6.2 If a buyer fails to make payment on the settlement date, and the Custodian is not providing contractual settlement, the Custodian shall pay the Agency the interest or other income, if any, actually received by it, from the party in default.

41.6.3 If the transaction fails or is delayed due to the inability of the Custodian to make such delivery due to actions of, or an inaction

by, the Custodian, its agents, employees or equipment, the Custodian shall promptly pay the Agency an amount to make it whole as if the transaction had been properly executed, provided that the foregoing provisions shall not apply if the inability, action or inaction is by reason of forces beyond the control of Custodian, and provided further that Custodian's obligation to make payment to the Agency shall be limited to amounts constituting direct money damages.

41.7 ANCILLARY SERVICES

41.7.1 The Custodian shall have a comprehensive contingency plan for timely disaster recovery in the event systems are rendered inoperative due to fire, flood or other disaster.

41.7.2 Settlement of Transactions:

Settlement of and payment for securities received for, and delivered from, the account may be made in accordance with the customary or established securities trading or securities processing practices and procedures in the jurisdiction or market in which the transaction occurs, including without limitation, the delivery of securities to a purchaser, broker, dealer or their respective agents either against a receipt for future payment or without any payment (so-called "free delivery").

41.7.3 Taxes:

The Agency is solely responsible and liable for the payment of and the reclamation, where applicable, of all taxes assessments, duties, and other governmental charges (including any interest or penalties with respect thereto) with respect to the cash or securities held hereunder or the Account. The Custodian, however, will cooperate with the Agency in connection with the Agency's payment or reclamation of taxes.

41.7.4 Pricing Services:

To the extent that the Custodian provides values of, and pricing information with respect to, securities, the Custodian is authorized to utilize generally recognized pricing services (including brokers, dealers and market makers). The Custodian shall not be liable or responsible for or be under any duty to inquire into, nor be deemed to make any assurances or warranties with respect to, the accuracy or completeness of such values or information, even if the Custodian, in performing services for itself and others, including services similar to those performed for the Agency, receives



different valuations of the same or similar securities of the same issuer. In the event such services are unable to provide a value of or pricing information with respect to securities and the Custodian, nevertheless, provides values and pricing information, the Custodian shall so advise the Agency, but shall have no other obligation or liability with respect to such valuation or pricing information.

- 41.8 PROPER INSTRUCTIONS AND EVIDENCE OF AUTHORITY The term "Proper Instructions" shall mean instructions received by the Custodian from the Agency or any person duly authorized by them. Such instructions may be in writing signed by the authorized person or may be in a tested communication or in a communication utilizing access codes effected between electro-mechanical or electronic devices or may be by such other means as may be agreed to from time to time by the Custodian and the party giving such instructions (including, without limitation, oral instructions). The Agency shall cause its duly authorized officer to certify to the Custodian in writing the names and specimen signatures of persons authorized to give proper instructions. The Custodian shall be entitled to rely upon the identity and authority of such persons until it receives notice from the Agency to the contrary.

The Custodian shall be protected in acting upon any instructions, notice, request, consent, certificate, instrument or paper reasonably believed by it to be genuine and to have been properly executed or otherwise given by or on behalf of the Agency. The Custodian may receive and accept a certificate from the Agency as conclusive evidence (i) of the authority of any person to act in accordance with such certificate or (ii) of any determination or of any action by the Agency as described in such certificate, and such certificate may be considered as in full force and effect until receipt by the Custodian of written notice to the contrary.

41.9 RESPONSIBILITY OF CUSTODIAN

- 41.9.1 The Custodian shall perform its duties hereunder with "Due Care." For the purposes of this agreement, "Due Care" shall mean the degree of care and skill demonstrated by fiduciaries acting in like capacity as a safekeeping Custodian. The Custodian shall not be responsible for the title, validity or genuineness, including good deliverable form, of any property or evidence of title thereto received by it or delivered by it pursuant to this Contract. The Custodian may at its discretion appoint and remove agents or subcustodians to carry out such of the provisions of this contract as the Custodian may from time to time direct; provided, however, that such appointment shall not relieve the Custodian of its responsibilities or liabilities under this Contract, and provided further that any depository selected with Due Care by the bank

shall not be deemed for purposes of this agreement an agent or subcustodian of the Bank.

41.9.2 Provided always that the Custodian and its agents and subcustodians act in good faith and with the exercise of Due Care in performance of such duties as would ordinarily be expected of a financial institution in the relevant market and subject to the terms of the Custody Agreement:

41.9.2.1 It is not liable for any loss or damage caused by the delay or failure of any central bank, any Depository, or any commercially prevalent payment or clearing system to deliver to or for the Bank or its subcustodians securities purchased or sold, or to make or receive and remit, any payment in connection with purchases or sales of securities, for delays or failures in providing corporate action notices, or for delays or inability by the Bank to perform its duties due to acts or omissions of any Depository or to disorder in market infrastructure with respect to any particular security, security exchange, central depository or clearing system; and

41.9.2.2 It is not liable for any delay or failure of any non-parties, company, corporation, or other body in charge of registering or transferring Securities in the name of the Custodian, any customer of the Custodian, or the Subcustodian, its nominee or agent, or for any consequential losses arising out of such delay or failure to transfer such Securities including non-receipt of bonus, dividends and rights and other accretions or benefits.

41.10 SECURITY CODES If the Custodian has issued security codes or passwords to the Agency in order that the Custodian may verify that certain transmissions of information, including Proper Instructions, have been originated by the Agency, the Custodian shall, to the extent authorized by law, be kept indemnified by and be without liability to the Agency for any action taken or omitted by it in reliance upon receipt by the Custodian of transmissions of information with the proper security code or password, including instructions purporting to be Proper Instructions, which the Custodian reasonably believes to be from the Agency.

41.11 SPECIAL AND CONSEQUENTIAL DAMAGES Except as otherwise provided in this Agreement, neither the Custodian nor the Agency shall be

## Statewide Securities Custody Model Contract

liable to the other for special or consequential damages unless such damages result from the gross negligence or fraud of that party.

- 41.12 NOTICES Notices and other writings shall be delivered by the most expeditious means available, with due regard given to the time sensitivity of the notice or demand being made:

To the Agency:

(Participating Entity Address)

To the Custodian:

Union Bank of California  
350 California Street, 6<sup>th</sup> Floor  
San Francisco, CA 94104  
Attention: Moon Lee  
Institutional Custody Services

Or to such other address as the Agency or Custodian may hereafter specify in writing. Telephone and facsimile notices shall be sufficient if communicated to the party entitled to receive such notice at the following numbers:

If to Agency:

Telephone ( ) \_\_\_\_ - \_\_\_\_ Facsimile ( ) \_\_\_\_ - \_\_\_\_

If to Custodian:

Telephone: (800) 255-0654 Facsimile: (415) 705-7320

or to such other numbers as either party may furnish the other party by written notice under this Section.

### **PAYMENT PROVISIONS**

#### 42. PAYMENTS

Fees and reimbursement for costs and expenses incurred by the Bank in connection with this Agreement, shall be paid quarterly after the last business day of each calendar quarter, with the first payment for the calendar quarter ending \_\_\_\_\_. The Bank shall submit to the respective Agency an invoice containing an itemized list of all costs and expenses.

The respective Agency will forward payment for service charges to the Bank, after the Agency verifies all activity and charges; within thirty days of receipt of the invoice, provided there are no significant unreconciled differences.

In the event services are rendered for less than a calendar quarter, as will be the case for the initial invoice period, or this Agreement is terminated prior to the end of a calendar quarter, the respective Agency shall pay the Bank's fee prorated for the portion of the calendar quarter such services are rendered or the Agreement is in effect, plus any costs and expenses incurred by the Bank for the Account up to or subsequent to the date of termination.

43. TAXES

It is mutually agreed and understood that all payments accrued on account of payroll taxes, unemployment contributions, any other taxes, insurance or other expenses for the Bank's staff shall be the sole liability of the Bank.

44. DAMAGES

If the Bank does not meet its Service obligations as detailed in Section 41 of this Agreement and such failure is not caused by a force majeure event, the Bank shall be required to negotiate a settlement with the Agency Contract Administrator for an appropriate reduction in charges.

In the event the Agency suffers any loss as a result of the Bank's gross negligence, fraud, or failure to exercise Due Care, as defined in Section 41.9.1, in the performance of its duties under this Agreement, either by the Bank or the Bank's agents, employees, subcontractors, or representatives under this Agreement, the Bank shall be liable to the Agency for such damages but only to the extent such damages constitute direct money damages caused by the Bank's negligence, fraud, or failure to exercise Due Care. The Agency shall be required to fully document such losses in writing by submitting such documentation to the Bank.

**CONTRACT EXECUTION**

45. COUNTERPARTS

This Agreement is to be executed in duplicate originals and each duplicate shall be deemed an original copy of the Agreement signed by each party, for all purposes.

46. SIGNATURE BLOCKS

**IN WITNESS WHEREOF** the parties hereto, having read this Agreement in its entirety, including all attachments hereto, do agree in each and every particular.

APPROVED

APPROVED

\_\_\_\_\_  
(NAME OF AGENCY)

UNION BANK OF CALIFORNIA  
(NAME OF BANK)

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
SIGNATURE

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TITLE

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